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OFFICE OF PETITIONS

In re Application of :
Felix Paul Jaecklin :
Application No. 10/645,601 : **DECISION ON PETITION**
Filed: August 22, 2003 :
Attorney Docket No. 21352 :

This is a decision on the petition, filed June 8, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application or in the alternative a petition to revive under the unintentional provisions of 37 CFR 1.137(b).

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 28, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 29, 2008.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is also **DISMISSED**.

As to the petition under 37 CFR 1.181:

A review of the written record indicates no irregularity in the mailing of the Office action and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket

and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

The petition fails to satisfy items (2) and (3) above. In this regard, petition does not include a statement from the practitioner attesting to the fact that a search of the file jacket and docket records to indicate that the Notice was not received nor has petitioner provided a copy of the docket record where the non-received Office action would have been entered had it been received.

As to the petition under 37 CFR 1.137(b):

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1) and (3).

With respect to item 1:

A petition to revive cannot be granted where there is an outstanding requirement. In this instance, there was no response to the outstanding Office action mailed February 12, 2009. A courtesy copy of this Office action is being mailed along with this decision. Accordingly, the petition to revive cannot be granted until the response to the Office action is received.

With respect to item 3:

The instant petition fails to contain the required statement of unintentional delay. 37 CFR 1.137(b) states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D)).]

As authorized the \$1620 petition fee has been charged to petitioner's deposit account.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should

include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
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By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions